



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DIAMOND STANDARD PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPL FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for an order of possession based on a 2 Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice) and to recover the cost of the filing fee.

The tenant, the landlord for the corporate landlord company, HZ (landlord), and an agent for the landlord JY (agent) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As neither party raised any concerns regarding the service of documentary evidence, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

Issues to be Decided

- Is the landlord entitled to an order of possession based on a 2 Month Notice?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the most recent tenancy agreement was submitted in evidence. A fixed-term tenancy began on August 1, 2021 and was scheduled to revert to a month to month after March 31, 2022. Monthly rent was \$1,600.00 per month and due on the first day of each month. The tenant paid a security deposit of \$1,600.00, which the landlord continues to hold.

The landlord submitted a copy of a signed Mutual Agreement to End a Tenancy document was submitted in evidence and the parties agreed that it was signed by the parties on May 31, 2021 and indicates that the tenancy will end on July 31, 2021 at 8:00 a.m. (Mutual Agreement).

Submitted in evidence was also a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated August 10, 2021 with an effective vacancy date listed as October 31, 2021 (2 Month Notice).

The agent stated that the 2 Month Notice was issued due to the tenant refusing to vacate the rental unit based on the Mutual Agreement. The tenant continues to occupy the rental unit and has taken the position that the tenancy cannot end until March 31, 2022.

Analysis

Based on the documentary evidence from the parties and the testimony of the parties provided by the parties during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that pursuant to section 44(1)(c) of the Act the parties mutually agreed in writing to end the tenancy on July 31, 2021 at 8:00 a.m. This is supported by the Mutual Agreement submitted in evidence that was signed by both

parties. I accept that the Mutual Agreement was signed on May 31, 2021. Therefore, I find the tenancy ended on July 31, 2021 at 8:00 a.m. and that the tenant has been overholding in the rental unit without permission ever since that date and time. Therefore, I find the tenancy did not end by way of the 2 Month Notice and that the 2 Month Notice is moot and that compensation under the Act related to the 2 Month Notice is not due to the tenant as the tenancy had already ended on July 31, 2021 at 8:00 a.m. and the 2 Month Notice was served after the tenancy had already ended. Therefore, I grant the landlord an order of possession effective **February 28, 2022 at 1:00 p.m.** as the parties confirmed that money for use and occupancy has been paid for the tenant. I find the landlord has not reinstated the tenancy.

As the landlord has succeeded with their application, I grant the landlord the recovery of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

I authorize the landlord to deduct **\$100.00** from the tenant's \$1,600.00 security deposit in full satisfaction of the recovery of the cost of the filing fee pursuant to sections 67 and 72 of the Act. I find the tenant's security deposit is now \$1,500.00 as a result, effective immediately pursuant to section 62(3) of the Act.

Conclusion

The landlord's application is successful, but not based on a 2 Month Notice, it is based on the tenancy ending by way of a signed Mutual Agreement noted above.

The tenancy ended July 31, 2021 at 8:00 a.m.

The landlord has been granted an order of possession effective February 28, 2022 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The tenant is cautioned that costs of such enforcement may be recoverable from the tenant by the landlord.

This decision will be emailed to the parties.

The order of possession will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 7, 2022

Residential Tenancy Branch